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STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

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Honorable Alan L. King
Jefferson County Judge of Probate
Probate Court Room 120
716 Richard Arrington Jr. Boulevard North
Birmingham, Alabama 35203

Barber's Commission of Jefferson County
– Barbers – Probate Judges – Elections –
Vacancies

The Probate Judge of Jefferson County may not call a special election to fill a vacancy on the Jefferson County Barber Commission if a vacancy is created on the Commission by any reason other than the expiration of that member's term. The seat should remain vacant until elections are held on the fourth Monday in July.

Dear Judge King:

This opinion of the Attorney General is issued in response to your request.

QUESTION

If a vacancy is created on the Jefferson County Barber Commission by any reason, other than the expiration of that member's term, can a special election be set by the Judge of Probate on the fourth Monday of any month to fill the seat, or shall the seat remain vacant until the fourth Monday in July as referred to in Local Act 2002-338?

FACTS AND ANALYSIS

In your letter of request, you informed this Office that an election was held in July 2014 to fill Place 3 on the Jefferson County Barber Commission ("Barber Commission"). The elected member resigned from the three-year term

in November 2014, which created a vacancy on the Jefferson County Barber Commission. The Jefferson County Barber Commission is created pursuant to local act. The most recent revision of the authorizing authority for the Jefferson County Barber Commission is found in Act 2002-338. Section 3 of the act discusses members of the Barber Commission. This provision states, in pertinent part, as follows:

There shall be a Barber Commission of the county consisting of three members. . . . The present members of the Commission having been previously appointed by the County Commission, shall serve for the duration of their term, *but in the event of a vacancy* existing at the time of taking effect of this Act or occurring in the future, *the vacancy shall be filled, and all subsequent members of the Commission shall be selected or appointed in the manner provided in this Act for terms of three years.* The members of the Commission shall be nominated by the barbers licensed by the Commission and only those licensed shall be eligible to vote for nominees for appointment to the Commission. *The Commission, at all times, shall be composed of three members,* all of whom shall be licensed barbers, who have been so licensed by the Commission for a period of five years prior to their appointment and be actively engaged as barbers at the time of their appointment. The Commission shall, 60 days prior to the expiration of the term of any member of the Commission for the county, give notice in writing to the licensed barbers that there will be a vacancy on the date of the expiration of the term of the member whose term is about to expire; *or if a vacancy be caused by any reason, other than the expiration of the term, the Commission shall, within 30 days after the vacancy occurs,* give notice to the licensed barbers of the existence of the vacancy. In either event, the licensed barbers will be requested to nominate two licensed barbers to fill each vacancy. Nominations shall be made by petition signed by not less than 25 licensed barbers. . . . All nominations shall be filed with the Commission on or before 20 days from the date fixed for mailing ballots for nomination for the members of the said members. Upon receipt of the nominations and at the expiration of the time for filing nominations, the judge of probate shall cause to be prepared one or more voting machines containing properly prepared ballots showing all qualified

candidates for each commission place to be filled. The judge of probate shall then *call an election to be held on the fourth Monday in July and the run off to be held on the third Monday in August. . . .*

2002 Ala. Acts No. 2002-338, 906 (emphasis added).

This provision expressly gives the probate judge the authority to call an election on the fourth Monday in July and a runoff election on the third Monday in August. Nothing, however, within this particular act, authorizes the probate judge to call an election in the instance where a vacancy occurs in office because of death, resignation, or removal of a commissioner other than on the fourth Monday in July. Moreover, this provision does not give the probate judge general authority to call an election. Accordingly, it is the opinion of this Office that the probate judge is not authorized to call a special election to fill a vacancy on the Jefferson County Barber Commission. *See, generally*, opinion to Honorable William H. Oswalt, Probate Judge, Fayette County, dated September 1, 1989, A.G. No. 89-00421; opinion to Honorable R.J. Green, Chairman, Macon County Commission, dated September 8, 1983, A.G. No. 83-00464.

CONCLUSION

The Probate Judge of Jefferson County may not call a special election to fill a vacancy on the Jefferson County Barber Commission if a vacancy is created on the Commission by any reason other than the expiration of that member's term. The seat should remain vacant until elections are held on the fourth Monday in July.

I hope this opinion answers your question. If this Office can be of further assistance, please contact Monet Gaines of my staff.

Sincerely,

LUTHER STRANGE
Attorney General

By:



BRENDA F. SMITH
Chief, Opinions Division